

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 06-019-17-1-5-02022-17
Petitioners: Erin J. Roth & Peter J. Rusthoven
Respondent: Boone County Assessor
Parcel: 019-00560-01
Assessment Year: 2017

The Indiana Board of Tax Review (Board) issues this determination in the above matter, finding and concluding as follows:

Procedural History

1. The Petitioners initiated their 2017 assessment appeal with the Boone County Assessor on June 28, 2017.
2. On October 4, 2017, the Boone County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief.
3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.
4. The Board issued a notice of hearing on September 26, 2018.
5. On November 14, 2018, Administrative Law Judge (ALJ) Patti Kindler held the Board's administrative hearing. She did not inspect the property.
6. Peter J. Rusthoven appeared *pro se*. Boone County Deputy Assessor Peggy J. Lewis appeared for the Respondent. Both were sworn and testified.
7. The property under appeal is a single-family residence located at 100 Bailey Court in Zionsville.
8. The PTABOA determined the total assessment was \$894,800 (land \$67,400 and improvements \$827,400).
9. The Petitioners requested a total assessment of \$815,000 (land \$67,400 and improvements \$747,600).

Record

10. The official record for this matter is made up of the following:

a) A digital recording of the hearing.

b) Exhibits:

Petitioner Exhibit 1: Appraisal report of the subject property prepared by Mr. Timothy Meador, SRA, AI-RRS, with an effective date of June 20, 2017.

Respondent Exhibit 1: Petitioners' Notice of Appeal dated June 28, 2017,
Respondent Exhibit 2: 2017 Notice of Assessment of Land and Structures / Improvements (Form 11),

Respondent Exhibit 3: Signed waiver of 30 day notice of hearing,

Respondent Exhibit 4: Boone County appeal worksheet,

Respondent Exhibit 5: 2017 subject property record card,

Respondent Exhibit 6: Assessor's Notice of Preliminary Hearing on Appeal dated June 28, 2017,

Respondent Exhibit 7: Petitioners' appraisal report prepared by Mr. Meador,

Respondent Exhibit 8: Joint Report by Taxpayer / Assessor to the County Board of Appeals of a Preliminary Informal Meeting (Form 134) dated August 10, 2017,

Respondent Exhibit 9: Notice of Hearing on Petition – Real Property (by County Property Tax Assessment Board of Appeals) (Form 114),

Respondent Exhibit 10: Notification of Final Assessment Determination (Form 115) dated October 4, 2017,

Respondent Exhibit 11: Petitioners' letter notifying the Assessor they were filing a petition to the Board dated November 13, 2017,

Respondent Exhibit 12: Form 131 with attachment,

Respondent Exhibit 13: The Board's Notice of Hearing.

c) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) these findings and conclusions.

Contentions

11. Summary of the Petitioners' case:

a) The subject property is assessed too high. In an effort to prove this, the Petitioners presented a certified appraisal of the subject property prepared by Timothy Meador, SRA, AI-RRS. Mr. Meador is an Indiana certified appraiser, and verified the appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). The Petitioners sought the appraisal report for the

purpose of securing a loan. According to Mr. Meador, the subject property's market value-in-use as of June 20, 2017, was \$815,000.¹ *Rusthoven testimony; Pet'r Ex. 1.*

- b) In developing his final estimate of value, Mr. Meador relied on the sales comparison approach to value. He selected eight comparable properties located in Zionsville. The properties ranged from .6 miles to 3.2 miles away from the subject property. Six of the properties sold between July of 2016 and May of 2017. The remaining two properties were active listings. Mr. Meador made adjustments to account for various differences among the properties. Based on this approach, he calculated the market value-in-use of the subject property at \$815,000. *Rusthoven testimony; Pet'r Ex. 1.*
- c) Addressing the Respondent's arguments, the Petitioners noted that the Respondent focused mainly on the land component of the assessment rather than the total value of the subject property. The Respondent, and the PTABOA, argued the land is "cherished" and valuable in the subject property's area. However, the land assessment did not increase between 2016 and 2017. The Respondent failed to present any probative evidence indicating the land value is incorrect. *Rusthoven argument.*
- d) The Respondent also argued the current assessment is correct because a 9% increase was "generically" applied to the properties located in the Village neighborhood. The subject property's assessment increased by 9.4%. The Respondent failed to provide any evidence proving that "applying a general percentage" to the Village neighborhood is relevant to the subject property's 2017 assessment. *Rusthoven argument.*
- e) Finally, the Petitioners claim there was a discussion at their PTABOA hearing about allowing "whatever happens out of this (hearing) to apply to the next year." Therefore, if the Petitioners receive a reduction in their 2017 assessment, it should carry forward to the 2018 assessment year. *Rusthoven testimony.*

12. Summary of the Respondent's case:

- a) The subject property is correctly assessed. The property is located in area referred to as the "Village." According to Peggy Lewis, an Indiana licensed certified residential appraiser, this area is considered "exclusive" and the land is "cherished." For example, people will buy an old house sitting on a tenth of an acre for \$200,000 and tear the home down and build a new one. *Lewis testimony.*
- b) The subject property is located within walking distance of downtown Zionsville. Downtown Zionsville is a "gorgeous" place with wonderful restaurants. The

¹ The Petitioners attached an additional appraisal to their Form 131. This USPAP-compliant appraisal was prepared by certified appraiser Janet M. Goar. This appraisal was secured for the purpose of obtaining a home equity loan. Ms. Goar estimated the market value-in-use as of February 2, 2015, to be \$780,000. This appraisal was never entered into the record as an exhibit and the Petitioners did not discuss this appraisal or its effect on the subject property's market value-in-use for 2017. Accordingly, the Board will not examine this appraisal.

Assessor's historical records show the closer a property is to the downtown area the higher its value is. *Lewis testimony*.

- c) Finally, Ms. Lewis challenged the Petitioners' appraisal. Ms. Lewis argued the appraiser's market value is too low considering the property's location. Additionally, the appraiser failed to adequately address the land value. The subject property is "almost" three-quarters of an acre in size, while other lots in the same subdivision are only a tenth to two-tenths of an acre. *Lewis argument; Resp't Ex. 7*.

Burden of Proof

13. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
14. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeal taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).
15. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15." Under those circumstances, "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
16. Here, the parties agree the assessed value of the subject property increased by more than 5% from 2016 to 2017. In fact, the total assessment increased from \$818,600 in 2016 to \$894,800 in 2017. Therefore, according to the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 the Respondent has the burden of proving the 2017 assessment is correct. To the extent the Petitioners request an assessment below the 2016 level of \$818,600; they have the burden to prove the lower value.

Analysis

17. The Respondent failed to make a prima facie case the 2017 assessment is correct. To the extent the Petitioners sought a lower value, they made a prima facie case that the subject property was worth \$815,000.
- a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
 - b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (In. Tax Ct. 2005). For a 2017 assessment, the valuation date was January 1, 2017. *See* Ind. Code § 6-1.1-2-1.5.
 - c) Here, the Respondent had the burden of proof. In an attempt to prove the property is correctly assessed, Ms. Lewis argued that based on the location, an “exclusive” area of downtown Zionsville known as the Village, the land is “cherished.”
 - d) The Respondent’s burden, however, is not merely to describe the property’s location or why the assessment increased. Instead, the Respondent must offer probative evidence proving the subject property’s market value-in-use. *See* Ind. Code § 6-1.1-15-17.2. These descriptions do not quantify a value.
 - e) For this reason, the Respondent failed to offer probative evidence to prove the 2017 assessment was correct. Therefore, the Petitioners are entitled to have the assessment returned to its 2016 value of \$818,600. The Board’s inquiry does not end here because the Petitioners requested a lower value. The Board now turns to the Petitioners’ evidence.
 - f) The Petitioners offered a USPAP-compliant appraisal performed by Mr. Meador. In completing his appraisal, Mr. Meador developed the sales comparison approach and ultimately valued the property at \$815,000 as of June 20, 2017. Even though the effective date is roughly six months past the relevant valuation date, it is still close enough to be probative. An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case. *Meridian Towers*, 805 N.E.2d at 479. In an attempt to impeach the appraisal, the Respondent argued Mr. Meador’s value is too low because he did not consider the subject property’s location or lot size. According to the appraisal, Mr. Meador

selected eight purportedly comparable properties and made several adjustments to account for various differences. This is well within the expertise of a licensed appraiser. The Respondent failed to offer any evidence of specific errors that would have led to a different value conclusion. Consequently, the Respondent failed to impeach or rebut the appraisal. Thus, we find the appraisal probative evidence of the subject property's market value-in-use.

- g) The Petitioners also claim they discussed with the PTABOA allowing "whatever happens out of this (hearing) to apply to the next year." Ultimately, it appears the Petitioners are requesting the Board's decision for the 2017 assessment year be applied to the 2018 assessment year as well. But the 2018 assessment year is not before the Board and we make no determination about it.

Conclusion

- 18. The Respondent had the burden of proving the 2017 assessment was correct. For the reasons stated above, the Respondent failed to make a prima facie case, thus the assessment must be reduced to the previous year's amount. The Petitioners sought an assessment lower than the 2016 level. The Petitioners made a prima facie case by presenting a USPAP-compliant appraisal. Accordingly, the 2017 assessment must be reduced to the appraised value of \$815,000.

Final Determination

In accordance with the above findings and conclusions, the 2017 assessment must be reduced to \$815,000.

ISSUED: March 14, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.